

REMARKS

The Office Action of January 25, 2010 has been received and carefully reviewed. It is submitted that, by this Amendment, all bases of rejection are traversed and overcome. Upon entry of this Amendment, claims 1, 7-14, 16-18, 20, and 21 remain in the application, and claims 11-14, 16, and 17 are withdrawn. Reconsideration of the claims is respectfully requested.

Claims 1, 7, 18, 20, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Groll (U.S. Patent Publication No. 2005/0019953) in view of Burke, et al. (U.S. Patent Publication No. 2008/0098802) and Ward (U.S. Patent No. 5,410,504). The Examiner asserts that the combination of Groll, Burke, and Ward renders obvious independent claims 1, 18, and 21.

At the outset, Applicants' below-listed Attorney would like to sincerely thank Examiner Diramio for all the time and courtesies extended during the telephonic interview of April 21, 2010. During the interview, claim 1 was discussed in light of the references of record, particularly paragraphs [0061] and [0066] of the Groll reference. Paragraph [0066] of Groll discloses that **calibration family information** may be loaded onto the test strip. Groll further defines what is meant by calibration family information in the same paragraph:

For example, the test strips usable in the test meter may be of two or more families where significant differences exist between the family test strip designs. For example, two families may use a different reagent on the test strip. In such situations, the test meter can still verify that the loaded calibration data matches the test strip family encoded onto the test strip, even if it is not possible to verify the precise production lot of the test strip.

In view of this disclosure, during the interview, the Examiner stated that independent claim 1 should be further amended to distinguish the calibration value recited in claim 1 from the calibration family information disclosed in paragraph [0066] of Groll. In other words, claim 1 should be amended to reflect, in some form, that the calibration data is not related to identification information (e.g., a lot ID). Accordingly,

independent claim 1 has been amended to recite, “the at least one calibration value being indicative of a property of the chemical reagent.” Support for this amendment may be found at least at page 9, line 31 through page 10, line 4 of Applicants’ application as filed. Claims 18 and 21, as well as withdrawn claim 11, have been similarly amended. It is submitted that the calibration value being indicative of a property of the chemical reagent would clearly indicate to one skilled in the art that such data is not related to identification information of the test strip.

Furthermore, claim 1 recites that the information storage portion is configured to store information indicative of at least one calibration **value** of the chemical reagent; not calibration information. Applicants submit that their specification, as filed, clearly states that the calibration **value** is indicative of a property of the chemical reagent (see again page 9, line 31 through page 10, line 4 of Applicants’ application). This is in contrast to calibration **information**, which Applicants define as *including* the calibration value, as well other information related to the test strip (such as, e.g., the date of manufacture, operating characteristics, electrode characteristics, etc.) (see page 7, lines 1-5 of Applicants’ application).

For the reasons stated above, Applicants submit that Groll *fails* to disclose a test strip including circuitry including an information storage portion configured to store information indicative of at least one calibration value of the chemical reagent, and that the at least one calibration value is indicative of a property of the chemical reagent. Applicants further submit that neither Burke nor Ward supply the deficiencies of Groll identified above. It is therefore submitted that Applicants’ invention as defined in independent claims 1, 18, and 21, and in those claims depending ultimately therefrom, is not anticipated, taught or rendered obvious by Groll, Burke, and Ward, either alone or in combination, and patentably defines over the art of record.

Further, during the telephonic interview, the Examiner further suggested amending claim 1 to recite that “wherein no other source of calibration information separate from the information storage portion on the disposable blood test device is

required for calibration of the meter” (emphasis added), and such amendment to claim 1 (and to claims 18 and 21 and withdrawn claim 11) is made herein. Support for this amendment may be found at least at page 14, lines 15-26 of Applicants’ application as filed.

Additionally, claims 8-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Groll in view of Burke and Ward, and further in view of Mandecki (U.S. Patent No. 2002/0006673). For the reasons stated above, it is submitted that the combination of Groll, Burke, and Ward fails to disclose all of the elements of amended claim 1, from which claims 8-10 depend. It is further submitted that Mandecki fails to supply the deficiencies of such combination of references. Since the combination of Groll, Burke, Ward, and Mandecki does not disclose all of the elements of claim 1, Applicants submit that claims 8-10 are patentable at least because of their dependency from claim 1. As such, it is submitted that Applicants’ invention as defined in claims 8-10 is not anticipated, taught, or rendered obvious by Groll, Burke, Ward, and Mandecki, either alone or in combination, and patentably defines over the art of record.

Further, if claim 1 is found to contain allowable subject matter, it is requested that the Examiner also consider claims 11-14, 16, and 17 for rejoinder. Claims 11-14, 16, and 17 are method of manufacturing claims which require all of the limitations of the self-calibrating, disposable blood test device as defined in claim 1. Thus, under the requirements of MPEP §821.04(b), if claim 1 is found to be allowable, it is submitted that claims 11-14, 16, and 17 are eligible for rejoinder, and the previous restriction requirement of claims 11-14, 16, and 17 should be withdrawn.

It is submitted that the absence of a reply to a specific rejection, issue or comment in the instant Office Action does not signify agreement with or concession of that rejection, issue or comment. Finally, nothing in this Amendment should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this Amendment, and the amendment of any claim does not signify concession of unpatentability of the claim prior to its amendment.

In summary, claims 1, 7-14, 16-18, 20, and 21 remain in the application, where claims 11-14, 16, and 17 are withdrawn. In view of the foregoing arguments, all pending claims are believed to be in condition for allowance, and such action is respectfully requested. Therefore, this response is believed to be a complete response to the Office Action, and further and favorable consideration is respectfully requested.

It is believed that no extensions of time or fees are required, but to the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this Amendment, including extension of time fees, to Deposit Account 08-2025, and please credit any excess fees to such deposit account.

If the Examiner believes it would expedite prosecution of the above-identified application, the Examiner is cordially invited to contact the undersigned attorney at the below-listed telephone number.

Respectfully submitted,

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Dated: April 23, 2010
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